

JUL 27 2006

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CURTIS LYNN MORGAN,)	
Petitioner,)	Civil Action No. 7:05-CV-00636
)	
v.)	ORDER
)	
UNITED STATES OF AMERICA)	By: Hon. James C. Turk
Respondent.)	Senior United States District Judge

This action brought pursuant to 28 U.S.C. § 2255 is before the court upon a motion to dismiss and petitioner's response thereto. Upon review of the record, the court finds that a genuine issue of material fact exists as to whether petitioner told counsel that he wished to file an appeal, and whether counsel's failure to do so constituted ineffective assistance. Accordingly, it is hereby

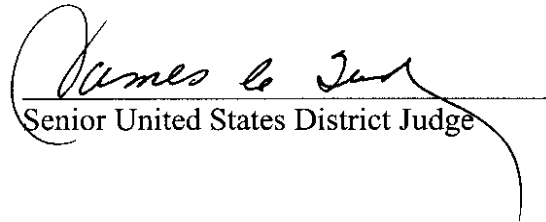
ADJUDGED AND ORDERED

as follows:

1. Respondent's motion to dismiss the motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, on the ground of petitioner's plea agreement waiver of collateral attack rights, shall be and hereby is **GRANTED** as to claims (2), (3), (4), (5) and (6), but the motion to dismiss is **DENIED** as to claim (1); and
2. Petitioner's motions for discovery are **DENIED**; but
3. The clerk is directed to set this matter for a hearing at the court's earliest convenience. Petitioner is hereby advised that if he cannot afford counsel to represent him at an evidentiary hearing in this matter, he may move the court for appointment of counsel, provided that he demonstrates his financial status by submitting an application to proceed in forma pauperis and a current statement of assets.

The clerk is directed to sent certified copies of this order and the accompanying memorandum opinion to the petitioner and to counsel of record for the respondent.

ENTER: This 27th day of July, 2006.


Senior United States District Judge